IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 305 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIMIT BHUPENDRABHAI PATEL

Versus

DIRECTOR

Appearance:

MR RR MARSHAL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED on Respondents Nos. 2, 3, 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/09/2000

ORAL JUDGEMENT

The petitioner was granted a Certificate dtd. 13th February, 1995 to the effect that he belongs to the Scheduled Caste. The Director of Social Welfare Department, Gandhinagar on 1st January, 1997 cancelled

the Certificate. By this application under Article 226 of the Constitution of India, the petitioner prays for issuance of appropriate Writ quashing and setting aside the order dtd. 1st January, 1997, passed by the Director of Social Welfare Department cancelling the certificate.

2. The facts which led the petitioner to prefer this petition, briefly stated are as under. The father of the petitioner belongs to the Patel community which is neither Scheduled Caste nor Scheduled Tribe, while his mother belongs to Mochi community i.e. Scheduled Caste. After completing his study in the Higher Secondary School, the petitioner applied for the admission in Engineering College. He had secured 80% marks in 12th Standard Examination. At that time, he tendered the Caste Certificate in question whereby he was certified to be the member of Scheduled Caste. The Committee for admission wanted to be satisfied about the caste to which the petitioner belongs. The petitioner, therefore, produced Marriage Certificate of his parents and also a certificate showing that he was brought up in the atmosphere of Mochi Community. As the Committee was satisfied that the Certificate regarding Scheduled Caste, the petitioner had produced, was genuine and he was entitled to the benefits which the members of the Scheduled Caste were entitled to, he was admitted to the course of Chemical Engineering in the faculty of Technology & Engineering, M.S. University, Baroda in the year 1995. The petitioner completed his course upto 2nd Semester in 1996, and he appeared at the examination for the 3rd Semester in December, 1996, the result of which was awaited when the petition was filed. At this stage, it may be stated that during the course of the arguments, it is made clear that the petitioner has already secured the degree, but before he was conferred with the degree, on 1st January, 1997, the opponent NO.1 cancelled the certificate and sent an intimation thereof to the Executive Secretary, L.D. Engineering College, Ahmedabad. The petitioner, therefore, had a reason to believe that because of such withdrawal of the Certificate, his study would be hampered. The respondent NO.1 was having no authority to withdraw the Certificate without any just cause. The withdrawal of the Certificate was illegal, arbitrary and also violative of Article 14 of the Constitution of India. After a lapse of one year and nine months, there was no good cause for the opponent No.1 to withdraw the Certificate. He had not obtained the Certificate by playing any mischief or fraud or suppressing any fact. He had placed his cards open and without suppressing any fact he had obtained the Certificate. When he had already cleared out first 2

Semesters and withdrawal of the Certificate if given effect to, he would be debarred from prosecuting his further study and deprived of other benefits, he is entitled to, it was to protect his right necessary to take some actions. Consequently, this petition for the aforesaid reliefs, is filed.

3. It is the admitted fact that the father of the petitioner belongs to the Patel Community, neither falling within the category of Scheduled Caste nor Scheduled Tribe, while his mother belongs to Mochi Community, falling within the category of Scheduled Caste. Whether the children of such couples (where one of the spouses belongs to Schedule Caste or Schedule Tribe) are entitled to benefits specially extended to Scheduled Caste or Scheduled Tribe, is the only point that has been raised in this petition. The petitioner relies upon the Government Resolution No.SCW-1087-947-B dtd. 31st August, 1987, under which, according to him, he is entitled to the benefits the members of the Scheduled Caste have been granted, because under that G.R., either the father or the mother when belongs to the Scheduled Caste or Scheduled Tribe, his or her children are entitled to the special benefits granted by the State.

4. In reply to such contention, Mr. Dave, the learned A.G.P. submits that the respondent No.1 was right in passing the order produced at Annexure-C because of the decision rendered by the Supreme Court in the Case of V.V. Giri vs. D.S. Doda, AIR 1959 S.C. 1318.

5. Of course, the decisions of the Supreme Court must ordinarily being binding prevail and rights and obligations of the parties would be governed by the law made clear by the Supreme Court; but, after the decision of the Supreme Court or the High Court binding on the parties, the Government, if amending relevant provisions of law or issuing further Circulars prefers to nullify the effect of the decision and adopts a particular policy for the well-being of the subject, the decisions rendered in past or prior to the issuance of the Circular or the amendment made, will not be applicable. In that case the amended provision or the G.R. issued will hold the field. In the case on hand, after the decision of the Supreme Court, the Government of Gujarat in 1987, issued the aforesaid circular adopting a particular policy under which the Government decided to grant benefits to the children of one of the two spouses belonging to Scheduled Caste or Scheduled Tribe for which Government was competent to grant. When, accordingly the State has

adopted a particular policy issuing G.R. after the decision of the Supreme Court, the said Resolution will be the decisive factor and the decision of the Supreme Court whose effects are nullified will not come into play. As per the G.R. on which the petitioner relies, the benefits are granted to the petitioner whose mother belongs to the Scheduled Caste, irrespective of the community of his father, he is entitled to all those benefits, the Government has decided to give. The same cannot be withheld by the officer/authority, unless the policy is changed or G.R. issued is held bad in law. The learned A.G.P. has with his usual candour submitted that the G.R. in question is not at all changed or withheld, or is yet not declared to be unconstitutional. In view of the fact, the action of the respondent NO.1 withdrawing the certificate, is illegal and the same is required to be quashed and set aside, making it clear that it is open to the Government to change the policy and withdraw all or few of the benefits or make its sphere limited with prospective effect.

6. As the petitioner has completed his study, the case regarding the rest of the prayers does not survive for consideration.

7. For the aforesaid reasons, the application is allowed. The order of the respondent NO.1 dtd. 1st January, 1997 at Annexure-C withdrawing the certificate issued to the petitioner certifying him to be the person belonging to the Scheduled Caste, is hereby quashed and set aside. Rule to the aforesaid extent is made absolute.

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